

ORDINANCE 1529

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO LAND USE AND ZONING, REPEALING NORTH BEND ORDINANCE NOS. 1524 AND 1525; AMENDING THE TABLE SET FORTH IN NORTH BEND MUNICIPAL CODE SECTION 18.10.030 TO INCLUDE A NEW COMMERCIAL LAND USE FOR MARIJUANA RELATED USES; AMENDING THE TABLE SET FORTH IN NORTH BEND MUNICIPAL CODE SECTION 18.10.050 TO INCLUDE A NEW COMMERCIAL LAND USE FOR MARIJUANA RELATED USES; CREATING AND ADOPTING A NEW NORTH BEND MUNICIPAL CODE CHAPTER 18.60 FOR THE REGULATION OF MARIJUANA; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in November 2012, Washington state voters passed I-502, which directed the Washington State Liquor Control Board (“LCB”) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address the methods for producing, processing and packaging of recreational marijuana; establish security requirements for retail outlets and retail outlet locations; establish hours of operation, labeling requirements and methods of transports within the state; and to address taxing of marijuana-related activities and the creation of a dedicated fund, consisting of marijuana excise taxes, license fees, penalties and other income; and

WHEREAS, the LCB adopted the final Rules on November 18, 2013, to accept license applications on November 18, 2013 and to issue licenses beginning on December 1, 2013; and

WHEREAS, the City of North Bend believes that the health, safety, and welfare of the community is best served by excluding from certain zones any production, processing, selling, or delivery of marijuana at a level greater than the level that may permissibly be included in a single collective garden under current state law; and

WHEREAS, on February 21, 2014 the Planning Director issued a SEPA threshold determination for this draft Ordinance of no significant impact; and

WHEREAS, on April 3, 2014 the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, the Planning Commission considered this land use and considered the associated zoning regulations on January 23, 2014, February 27, 2014, March 13, 2014, March 27, 2014, and April 10, 2014, and a public hearing was held on March 13, 2014, and

WHEREAS, on April 10, 2014, the Planning Commission transmitted its recommendation to the City Council hereby attached as Exhibit A; and

WHEREAS, on April 22, 2014, the Community and Economic Development Council Committee considered Planning Commission's recommendation and corresponding draft ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Repealer: Ordinance No. 1524 and Ordinance No. 1525, adopted on April 15, 2014, are hereby repealed in their entirety.

Section 2. Table 18.10.030 – Permitted and Conditional Land Uses, Amended: The Table set forth in North Bend Municipal Code Section 18.10.030, Table of permitted and conditional uses, is hereby amended only to include a new commercial land use for marijuana related uses, commercial land use subsection 2.41. The remainder of Section 18.10.030 and the Table therein shall otherwise remain as currently adopted. The new commercial land use Table subsection 2.41 for marijuana related uses shall read as follows:

Table 18.10.030 – Permitted and Conditional Land Uses

P = Permitted use PND = Planned neighborhood development review required CUP = Conditional use permit required LAND USES:	RESIDENTIAL		COMMERCIAL		INDUSTRIAL			PUBLIC FACILITIES			OVERLAY DISTRICT		
	LDR	CR	HD R	N B	D C	IC	IMU	USO D	EP- 1	EP- 2	PO SPF	ENB- MPO D and LCO D	TL- MPO D

. . . 2.00 COMMERCIAL: . . . 2.41 Marijuana related uses (producer, processor, retail and other) . . .	See NBMC Chapter 18.60
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Section 3. Table 18.10.050 – Land Use Performance Standards, Amended: The Table set forth in North Bend Municipal Code Section 18.10.050, Table of performance standards, is hereby amended only to include a new commercial land use for marijuana related uses, commercial land use subsection 2.41. The remainder of the Section 18.10.050 and the Table therein shall otherwise remain as currently adopted. The new commercial land use Table subsection 2.41 for marijuana related uses shall read as follows:

Table 18.10.050 – Land Use Performance Standards

TYPE OF LAND USE:	PERFORMANCE STANDARD(S):
. . . 2.00 COMMERCIAL . . . 2.41: Marijuana related uses (producer, processor, retail and other)	See NBMC Chapter 18.60

Section 4. Marijuana Regulation: A new Chapter 18.60 of the North Bend Municipal Code, to be entitled “Marijuana Regulation”, is hereby created and adopted to read as follows:

Chapter 18.60 MARIJUANA REGULATION

18.60.010 Findings and Purpose.

18.60.020 Definitions.

18.60.030 Location Criteria for Recreational Marijuana Uses.

18.60.035 Performance Standards.

18.60.040 Business License Required.
18.60.050 Signs and Advertising.
18.60.060 Security Requirements.
18.60.070 No City Liability – Indemnification.
18.60.080 Adoption by Reference.

18.60.010 Findings and Purpose.

A. The purpose of this Chapter is to establish where recreational marijuana producers, processors and retail outlets may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Chapter, every recreational marijuana processor, producer and retail outlet shall obtain a City business license under Title 5 of the North Bend Municipal Code.

B. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state statutory or common law prohibiting or otherwise regulating the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. This Chapters intention is to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

18.60.020 Definitions

The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 and RCW 69.50.101.

- A. "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.
- B. "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.
- C. "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.
- D. "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

- E. "Early Learning and Development Program" means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, programs funded by the Federal government, State or local educational agencies (including individuals with Disabilities Education Act- funded programs); (c) Early Head Start and Head Start programs; and (d) any non-relative childcare providers not otherwise regulated by the State and regularly cares for two or more unrelated children for a fee in a provider setting. (e) State affiliates of the National Association for the Education of Young Children.
- F. "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.
- G. "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.
- H. "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.
- I. "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.
- J. "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.
- K. "Lot" means either of the following:
 - a. The flowers from one or more marijuana plants of the same strain. A single lot of lowers cannot weigh more than five pounds; or
 - b. The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.
- L. "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.
- M. "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses

of all principal or governing persons named in this definition and referenced in WAC 314-55-035.

N. "Pesticide" means, but is not limited to:

- a. Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest;
- b. any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
- c. any spray adjuvant;

Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

O. "Perimeter" means a property line that encloses an area.

P. "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

Q. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

R. "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

S. "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

T. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

U. "Residence" means a person's address where he or she physically resides and maintains his or her abode.

V. "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

W. "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

18.60.030 Location Criteria for Recreational Marijuana Uses

A. No recreational marijuana producer, processor or retail outlet may locate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;
5. Early Learning and Development Program;
6. Public park;
7. Public transit center;
8. Library; or
9. Any game arcade (where admission is not restricted to persons age twenty-one or older).

The distances described above shall be computed by direct measurement as stated in WAC 314-55-050(10) as follows:

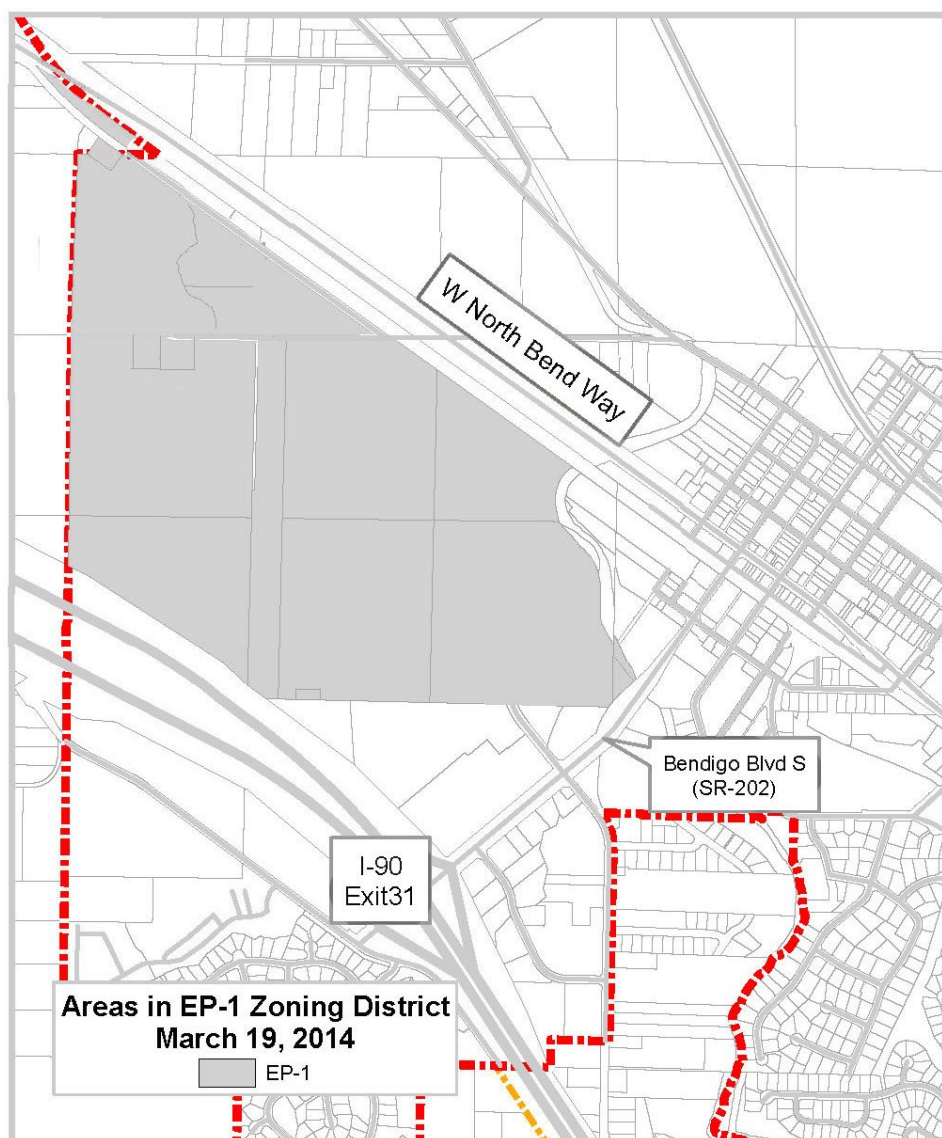
The distance shall be measured as the shortest straight line distance from the property line of the licensed premises to the property line of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 and older.

B. No recreational marijuana producer, processor or retail outlet may locate within any residentially zoned district or within any residential dwelling in the City. Furthermore NBMC 18.10.050.153.B prohibits medical marijuana collective gardens or any other use involving legal sales or exchange of marijuana as a home occupation business.

C. Marijuana Producer Processor Allowed Locations

The following figure identifies where producing and processing of marijuana are allowed. A supplemental map detailing current buffer zones as described in this sub-section is available from the Department of Community and Economic Development. Figure 1 is subject to change.

Figure 1 - Marijuana Producer/Processor Allowed Locations

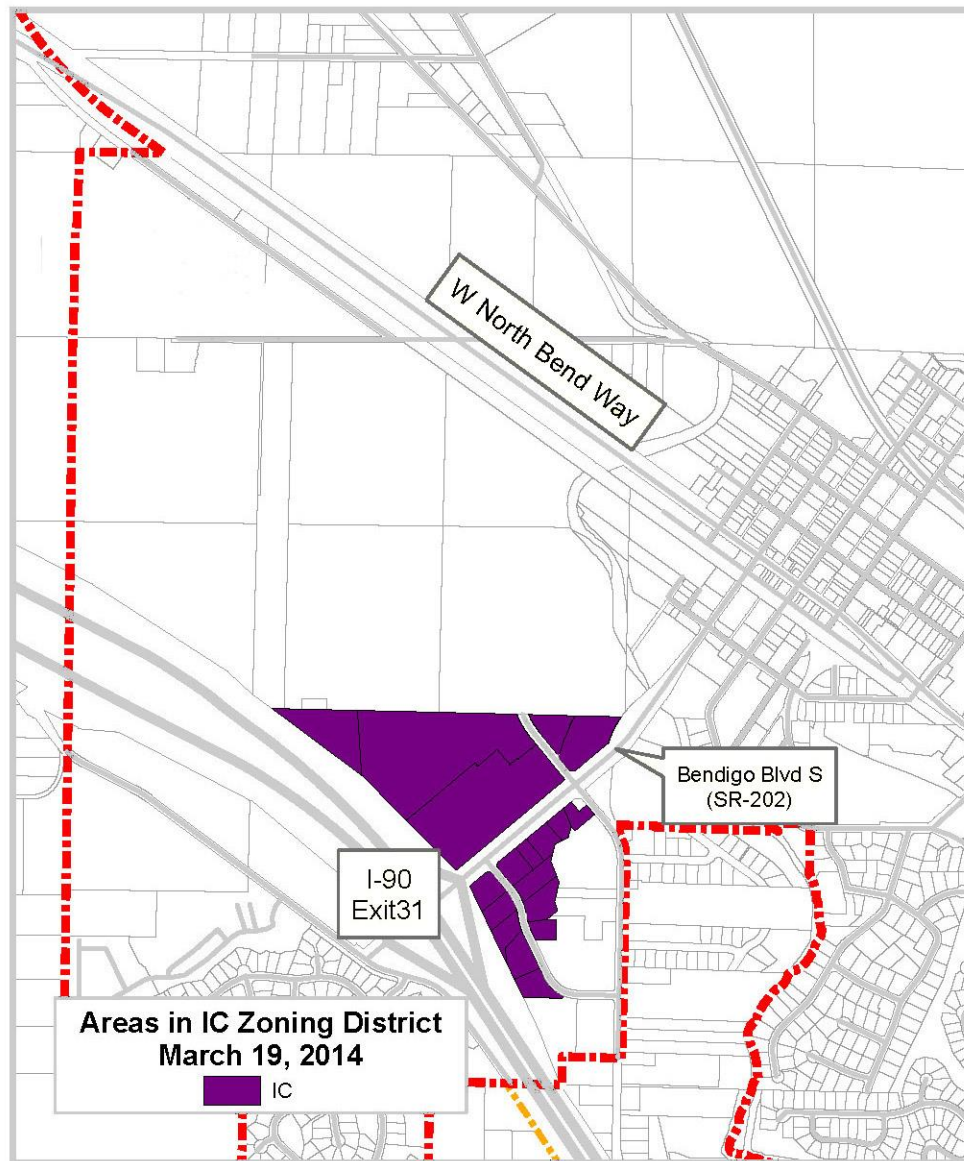


*Producers and processors may locate in a portion of the Employment Park - 1 Zone located South of W North Bend Way, West of Bendigo Blvd. S, and North of Interstate 90 as depicted in Figure 1. Producers and processors are subject to compliance with 18.60.030 location criteria and all other provisions of this Chapter.

D. Marijuana Retail Establishments Allowed Locations

The following figure identifies where marijuana retail establishments are allowed. A supplemental map detailing current buffer zones as described in this sub-section is available from the Department of Community and Economic Development. The Figure 2 is subject to change.

Figure 2 - Marijuana Retail Establishments Allowed Locations



*Retail establishments may locate in a portion of the Interchange Commercial Zone located North of I-90 interchange at exit 31, adjacent to Bendigo Blvd. S and South Fork Ave. SW as depicted in Figure 2. Retail establishments are subject to compliance with 18.60.030 and all other provisions of this Chapter.

18.60.035 Performance Standards

All performance standards of licensed premises shall comply with the requirements of WAC 314-55-075, WAC 314-55-077, and WAC 314-55-079 (and all applicable rules and regulations promulgated thereunder).

<p>Producer</p>	<p>A. A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors;</p> <p>B. The maximum amount of space for marijuana production is limited to two million square feet state-wide. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:</p> <p style="padding-left: 40px;">Tier 1 – Less than two thousand square feet; Tier 2 – Two thousand square feet to ten thousand square feet; and Tier 3 – Ten thousand square feet to thirty thousand square feet. (Prohibited in North Bend pursuant to this chapter);</p> <p>C. Tier 3 – Producer licenses for facilities of ten thousand square feet or more is prohibited;</p> <p>D. Outdoor production shall not be allowed in an open or cleared ground or field; rather outdoor production shall be fully enclosed in a non-rigid greenhouse or other structure.</p> <p>E. Outdoor producers must meet the security requirements described in WAC 314-55-083, which shall be confirmed for compliance by the City prior to issuance of a business licenses.</p>
<p>Processor</p>	<p>A. A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. A marijuana processor is allowed to blend tested usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot uses in the blend are met and the percentage by weight if each lot is also included on the label.</p> <p>B. A Processor shall meet the requirements as set forth in WAC 314.55.077.</p> <p>C. A Processor building foot print shall not exceed 10,000 square feet in size and all activities of said use shall be conducted indoors.</p>

Retail	<p>A. A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older;</p> <p>B. Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101;</p> <p>C. Internet sales and delivery of product is prohibited;</p> <p>D. No sampling or consuming of marijuana, marijuana-infused products, or marijuana paraphernalia shall occur on premises of licensed retail establishment.</p>
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18.60.040 Business License Required.

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer, processor or retail outlet. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 17.10.005 below.

B. A business license is required from the City for operation of any recreational marijuana producer, processor or retail outlet.

18.60.050 Signs and Advertising.

A. All signage and advertising for a recreational marijuana producer, processor, or retail outlet shall comply with all applicable provisions of the North Bend Municipal Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

18.60.060 Security Requirements.

Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

18.60.070 No City Liability – Indemnification.

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana business that is the subject of the license.

18.60.080 Adoption by Reference.

The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140, a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 5. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH OF JUNE, 2014.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: June 25, 2014
Effective: June 30, 2014

Susie Oppedal, City Clerk